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Judge Hellerstein

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

'09 CIV 5076

TERESA LARA BENAVIDEZ, MARIA DE LOURDES GALVEZ, JAMIE HUERTA, FLORA ZURITA, on behalf of themselves and all others similarly situated, **Plaintiffs,** **-against-** **PLAZA MEXICO, INC., PIRAMIDES MAYAS INC., MAMA MEXICO MIDTOWN REALTY LLC, JUAN ROJAS CAMPOS, VINCENTE ROJAS, MIGUEL ROJAS** **Defendants.**	**CLASS ACTION COMPLAINT**

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CASHIERS

Plaintiffs, Teresa Lara Benavidez, Maria de Lourdes Galvez, Jamie Huerta, and Flora Zurita, individually and on behalf of all others similarly situated, as class representatives, upon personal knowledge as to themselves and upon information and belief as to other matters, allege as follows:

NATURE OF THE ACTION

1. This lawsuit seeks to recover minimum wages, overtime compensation, spread of hours, and misappropriated tips and unlawful deductions for Plaintiffs and their similarly situated co-workers – servers, bussers, bartenders and other hourly food service workers who have worked at the three Mama Mexico locations in New York and New Jersey owned and operated by: Plaza Mexico Inc., Piramides Mayas Inc., and Mama Mexico Midtown Realty LLC a/k/a the

Mama Mexico Restaurants ("Mama Mexico"), high-end Mexican restaurants located in New York and New Jersey.

2. This lawsuit also seeks to recover damages for pregnancy discrimination, sexual harassment, gender discrimination, hostile work environment and battery on behalf of Plaintiffs Teresa Lara Benavidez, Maria de Lourdes Galvez, Jamie Huerta, and Flora Zurita.

3. Mama Mexico owns and operates three Mama Mexico restaurants located in New York City and Englewood Cliffs, New Jersey.

4. Mama Mexico has been recognized by The American Academy of Hospitality Sciences as a five-star restaurant.

5. Mama Mexico's success, however, comes at the expense of their hourly service workers. Mama Mexico has denied these workers proper minimum wages, overtime compensation, customer gratuities, and reimbursement for uniform expenses and other earned wages. Defendants further created, condoned, and perpetuated a hostile work environment where discrimination, battery, and sexual harassment were commonplace.

6. Plaintiffs bring this action on behalf of themselves and similarly situated current and former Mama Mexico tipped hourly service workers who elect to opt-in to this action pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.* ("FLSA"), and specifically, the collective action provision of 29 U.S.C. § 216(b), to remedy violations of the wage-and-hour provisions of the FLSA by Defendants that have deprived Plaintiffs and others similarly situated of their lawfully earned wages.

7. Plaintiffs also bring this action on behalf of themselves and all similarly situated current and former Mama Mexico tipped hourly service workers pursuant to Federal Rule of Civil Procedure 23 to remedy violations of the New York Labor Law ("NYLL") Article 6, §§

190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

THE PARTIES

Plaintiff Teresa Lara Benavidez

8. Plaintiff Teresa Lara Benavidez ("Benavidez") is an adult individual who is a resident of New York, New York.

9. Benavidez was employed by Defendants as a busser, a tipped hourly service worker, at Mama Mexico from approximately June 2005 through December 2006, and June 2007 through May 2009.

10. Benavidez is a covered employee within the meaning of the FLSA and the NYLL.

11. A written consent form for Benavidez is attached to this Complaint.

Plaintiff Maria de Lourdes Galvez

12. Plaintiff Maria de Lourdes Galvez ("Galvez") is an adult individual who is a resident of New York, New York.

13. Galvez has been employed by Defendants as a busser, a tipped hourly service worker, at Mama Mexico from approximately May 2007 until the present time.

14. Galvez is a covered employee within the meaning of the FLSA and the NYLL.

15. A written consent form for Galvez is attached to this Complaint.

Plaintiff Jamie Huerta

16. Plaintiff Jamie Huerta ("Huerta") is an adult individual who is a resident of New York, New York.

17. Huerta was employed by Defendants as a waitress, a tipped hourly service worker, at Mama Mexico from approximately August 2008 through April 2009.

18. Huerta is a covered employee within the meaning of the FLSA and the NYLL.

19. A written consent form for Huerta is attached to this Complaint.

Plaintiff Flora Zurita

20. Plaintiff Flora Zurita ("Zurita") is an individual who is a resident of New York, New York.

21. Zurita was employed by Defendants as a waitress, a tipped hourly service worker, at Mama Mexico from approximately October 2008 through April 2009.

22. Zurita is a covered employee within the meaning of the FLSA and the NYLL.

23. A written consent form for Zurita is attached to this Complaint.

Defendants

24. Plaza Mexico, Inc., Piramides Mayas Inc., Mama Mexico Midtown Realty LLC, Juan Rojas Campos, Vincente Rojas and Miguel Rojas (collectively "Defendants") jointly employed Plaintiffs and similarly situated employees at all times relevant. Each Defendant has had substantial control over Plaintiffs' working conditions, and over the unlawful policies and practices alleged herein.

25. During relevant times, Defendants have been Plaintiffs' employers within the meaning of the FLSA.

26. The individual Defendants and Mama Mexico Restaurants are part of a single integrated enterprise that jointly employed Plaintiffs and similarly situated employees at all times relevant. The individual Defendants and Mama Mexico Restaurants have had a high degree of interrelated and unified operations. The Mama Mexico Restaurants shared common

management, centralized control of labor operations, common ownership, common control, common business purposes, and interrelated business goals.

27. Upon information and belief, all Defendants have had control over, and the power to change compensation practices at Mama Mexico Restaurants.

28. Upon information and belief, all Defendants have had the power to determine employee policies at Mama Mexico Restaurants, including, but not limited to, time-keeping and payroll policies, and policies governing the allocation of tips and/or gratuities.

Plaza Mexico, Inc.

29. Plaza Mexico, Inc. has owned and operated Mama Mexico Restaurants, located at 2672 Broadway, New York, New York 10025, 214 East 9th Street, New York, New York 10017 and 464 Sylvan Avenue, Englewood Cliffs, New Jersey 07632 during the relevant period.

30. Plaza Mexico, Inc. is a foreign business corporation organized and existing under the laws of Delaware.

31. Plaza Mexico Inc.'s principal executive office is located in New York, New York.

32. Plaza Mexico Inc.'s principal executive office is located at 2672 Broadway, New York, New York 10025.

33. All of the Mama Mexico Restaurants are listed on the Mama Mexico website, at http://www.mamamexico.com.

34. Plaza Mexico, Inc., is a covered employer within the meaning of the FLSA and the NYLL and, at all times relevant, employed Plaintiffs and/or jointly employed Plaintiffs and similarly situated employees.

35. At all times relevant, Plaza Mexico Inc.'s annual gross volume of sales made or business done was not less than $500,000.00.

Piramides Mayas Inc.

36. Piramides Mayas Inc., has owned and operated Mama Mexico Restaurants, located at 2672 Broadway, New York, New York 10025, 214 East 9th Street, New York, New York 10017 and 464 Sylvan Avenue, Englewood Cliffs, New Jersey 07632 during the relevant period.

37. Piramides Mayas Inc., is a domestic business corporation organized and existing under the laws of New York.

38. Piramides Mayas Inc.'s principal executive office is located in New York, New York.

39. Piramides Mayas Inc.'s principal executive office is located at 2672 Broadway, New York, New York 10025.

40. All of the Mama Mexico Restaurants are listed on the Mama Mexico website, at http://www.mamamexico.com.

41. Piramides Mayas Inc. is a covered employer within the meaning of the FLSA and the NYLL and, at all times relevant, employed Plaintiffs and/or jointly employed Plaintiffs and similarly situated employees.

42. At all times relevant, Piramides Mayas Inc.'s annual gross volume of sales made or business done was not less than $500,000.00.

Mama Mexico Midtown Realty LLC

43. Mama Mexico Midtown Realty LLC has owned and operated Mama Mexico Restaurants, located at 2672 Broadway, New York, New York 10025, 214 East 9th Street, New York, New York 10017 and 464 Sylvan Avenue, Englewood Cliffs, New Jersey 07632 during the relevant period.

44. Mama Mexico Midtown Realty LLC is a domestic limited liability company organized and existing under the laws of New York.

45. Mama Mexico Midtown Realty LLC's principal executive office is located in New York, New York.

46. Mama Mexico Midtown Realty LLC's principal executive office is located at 2672 Broadway, New York, New York 10025.

47. All of the Mama Mexico Restaurants are listed on the Mama Mexico website, at http://www.mamamexico.com.

48. Mama Mexico Midtown Realty LLC is a covered employer within the meaning of the FLSA and the NYLL and, at all times relevant, employed Plaintiffs and/or jointly employed Plaintiffs and similarly situated employees.

49. At all times relevant, Mama Mexico Midtown Realty LLC's annual gross volume of sales made or business done was not less than $500,000.00.

The Rojas'

50. The individual Defendants, Juan Rojas Campos, Vincente Rojas, and Miguel Rojas (the "Rojas"), maintain control, oversight, and direction over the operation of Defendants' facilities, including their employment practices.

51. The Rojas' own three Mama Mexico restaurants located in New York and New Jersey.

52. The Rojas' are "employers" under the FLSA and NYLL and employed or jointly employed Plaintiffs and similarly situated employees.

53. Upon information and belief, throughout the relevant period, the Rojas' have had the power to control the operations and compensation practices at the three Mama Mexico restaurants.

Juan Rojas Campos

54. Upon information and belief, Defendant Juan Rojas Campos is a resident of the State of New York.

55. Upon information and belief, at relevant times, Defendant Juan Rojas Campos has been the founder and Chief Operating Officer of Mama Mexico.

56. Upon information and belief, Defendant Juan Rojas Campos has been an agent of the Mama Mexico Restaurants.

57. Upon information and belief, Defendant Juan Rojas Campos has had power over personnel decisions at the Mama Mexico Restaurants.

58. Upon information and belief, Defendant Juan Rojas Campos has had power over payroll decisions by the Mama Mexico Restaurants.

59. Upon information and belief, Defendant Juan Rojas Campos has taken an active role in managing the Mama Mexico Restaurants.

60. Upon information and belief, at all times relevant, Defendant Juan Rojas Campos has had the power to hire and fire employees of the Mama Mexico Restaurants, including Plaintiffs, set their wages, retain time and/or wage records, and otherwise control the terms and conditions of their employment. Upon information and belief, at all times relevant, Defendant Juan Rojas Campos has also had the power to stop any illegal pay practices that harmed Plaintiffs.

61. Defendant Juan Rojas Campos is a covered employer within the meaning of the FLSA and the NYLL and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

Vincente Rojas

62. Upon information and belief, Defendant Vincente Rojas is a resident of the State of New York.

63. Upon information and belief, at relevant times, Defendant Vincente Rojas has been a partner/manager of Mama Mexico.

64. Upon information and belief, Defendant Vincente Rojas has been an agent of The Mama Mexico Restaurants.

65. Upon information and belief, Defendant Vincente Rojas has had power over personnel decisions at the Mama Mexico Restaurants.

66. Upon information and belief, Defendant Vincente Rojas has had power over payroll decisions by the Mama Mexico Restaurants.

67. Upon information and belief, Defendant Vincente Rojas has taken an active role in managing the Mama Mexico Restaurants.

68. Upon information and belief, at all times relevant, Defendant Vincente Rojas has had the power to hire and fire employees of the Mama Mexico Restaurants, including Plaintiffs, set their wages, retain time and/or wage records, and otherwise control the terms and conditions of their employment. Upon information and belief, at all times relevant, Defendant Vincente Rojas has also had the power to stop any illegal pay practices that harmed Plaintiffs.

69. Defendant Vincente Rojas is a covered employer within the meaning of the FLSA and the NYLL and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

Miguel Rojas

70. Upon information and belief, Defendant Miguel Rojas is a resident of the State of New York.

71. Upon information and belief, at relevant times, Defendant Miguel Rojas has been a partner/manager of Mama Mexico.

72. Upon information and belief, Defendant Miguel Rojas has been an agent of the Mama Mexico Restaurants.

73. Upon information and belief, Defendant Miguel Rojas has had power over personnel decisions at the Mama Mexico Restaurants.

74. Upon information and belief, Defendant Miguel Rojas has had power over payroll decisions by the Mama Mexico Restaurants.

75. Upon information and belief, Defendant Miguel Rojas has taken an active role in managing the Mama Mexico Restaurants.

76. Upon information and belief, at all times relevant, Defendant Miguel Rojas has had the power to hire and fire employees of the Mama Mexico Restaurants, including Plaintiffs, set their wages, retain time and/or wage records, and otherwise control the terms and conditions of their employment. Upon information and belief, at all times relevant, Defendant Miguel Rojas has also had the power to stop any illegal pay practices that harmed Plaintiffs.

77. Defendant Miguel Rojas is a covered employer within the meaning of the FLSA and the NYLL and at all times relevant, employed and/or jointly employed Plaintiffs and similarly situated employees.

JURISDICTION AND VENUE

78. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1337 and jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. §§ 1332 and 1367.

79. Plaintiff's state law claims are so closely related to Plaintiff's claims under the Fair Labor Standards Act that they form part of the same case or controversy under Article III of the United States Constitution.

80. This Court also has jurisdiction over Plaintiff's claims under the FLSA pursuant to 29 U.S.C. § 216(b).

81. At least one member of the proposed class is a citizen of a state different from that of at least one Defendant.

82. Plaintiffs' claims involve matters of national or interstate interest.

83. Citizenship of the members of the proposed class is dispersed among a substantial number of states.

84. Upon information and belief, Defendant Plaza Mexico, Inc., resides in New York, New York.

85. Upon information and belief, Defendant Plaza Mexico, Inc., is subject to personal jurisdiction in New York.

86. Upon information and belief, Defendant Piramides Mayas Inc., resides in New York, New York.

87. Upon information and belief, Defendant Piramides Mayas Inc., is subject to personal jurisdiction in New York.

88. Upon information and belief, Defendant Mama Mexico Midtown Realty, LLC resides in New York, New York.

89. Upon information and belief, Defendant Mama Mexico Midtown Realty, LLC is subject to personal jurisdiction in New York.

90. Upon information and belief, Defendant Juan Rojas Campos resides in New York.

91. Upon information and belief, Defendant Juan Rojas Campos is subject to personal jurisdiction in New York.

92. Upon information and belief, Defendant Vincente Rojas resides in New York.

93. Upon information and belief, Defendant Vincente Rojas is subject to personal jurisdiction in New York.

94. Upon information and belief, Defendant Miguel Rojas resides in New York.

95. Upon information and belief, Defendant Miguel Rojas is subject to personal jurisdiction in New York.

96. Upon information and belief, the amount in controversy in this matter exceeds the sum or value of $5,000,000.00, exclusive of interest and costs.

97. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

98. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391 (b)(2).

99. A substantial part of the events or omissions giving rise to the claims occurred in this district.

CLASS ACTION ALLEGATIONS

100. Plaintiff bring the Third, Fourth, Fifth, Sixth, Seventh and Eighth Causes of Action, NYLL claims, under Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and a class of persons consisting of

> all persons who have worked as tipped hourly service workers at Mama Mexico in New York between May 29, 2003 and the date of final judgment in this matter (the "Rule 23 Class").

101. Excluded from the Rule 23 Class are Defendants, Defendants' legal representatives, officers, directors, assigns, and successors, or any individual who has, or who at any time during the class period has had, a controlling interest in Defendants; the Judge(s) to whom this case is assigned and any member of the Judges' immediate family; and all persons who will submit timely and otherwise proper requests for exclusion from the Rule 23 Class.

102. The employees in the Rule 23 Class are so numerous that joinder of all members is impracticable.

103. Upon information and belief, the size of the Rule 23 Class is at least 100 individuals. Although the precise number of such employees is unknown, the facts on which the calculation of that number depends are presently within the sole control of Defendants.

104. Defendants have acted or have refused to act on grounds generally applicable to the Rule 23 Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Rule 23 Class as a whole.

105. Common questions of law and fact exist as to the Rule 23 Class that predominate over any questions only affecting them individually and include, but are not limited to, the following:

(a) whether Defendants violated NYLL Article 6, §§190 *et seq.*, and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations, 12

N.Y.C.R.R. Part 137, as alleged herein;

(b) whether Defendants correctly calculated and compensated Plaintiffs and the Rule 23 Class for minimum wage and overtime for hours worked in excess of 40 per workweek;

(c) whether Defendants failed to provide Plaintiffs and the Rule 23 Class spread of hours compensation as required by the NYLL;

(d) whether Defendants misappropriated tips from Plaintiffs and the Rule 23 Class;

(e) whether Defendants' tip pooling scheme was created through the mutual agreement of Plaintiffs and the Rule 23 Class;

(f) whether Defendants failed to keep true and accurate time and pay records for all hours worked by its employees, and other records required by the NYLL;

(g) whether Defendants failed to comply with the posting and notice requirements of the NYLL;

(h) whether Defendants failed to furnish Plaintiffs and the Rule 23 Class with an accurate statement of wages, hours worked, rates paid, gross wages, and the claimed tip allowance as required by the NYLL;

(i) whether Defendants demanded, handled, pooled, counted, distributed, accepted and/or retained gratuities paid by customers that were intended for Plaintiffs and the Rule 23 Class and which customers reasonably believed to be gratuities for Plaintiffs and the Rule 23 Class;

(j) whether Defendants failed to pay the required minimum amount of call-in pay for all days on which Plaintiffs and the Rule 23 Class reported for duty;

(k) whether Defendants made unlawful deductions from the wages of Plaintiffs and the Rule 23 Class by charging Plaintiffs and the Rule 23 Class for customers who leave, but fail to pay for their food and/or drinks, for breakages or spoilages, and for uniform-related expenses;

(l) whether Defendants' policy of failing to pay workers was instituted willfully or with reckless disregard of the law; and

(m)the nature and extent of class-wide injury and the measure of damages for those injuries.

106. The claims of Plaintiffs are typical of the claims of the Rule 23 Class they seek to represent. Plaintiffs and all the Rule 23 Class members work, or have worked, for Defendants as

hourly food service employees at Mama Mexico. Plaintiffs and the Rule 23 Class members enjoy the same statutory rights under the NYLL to be paid for all hours worked, to be paid overtime wages, and to keep the tips they earn. Plaintiffs and Rule 23 Class members have all sustained similar types of damages as a result of Defendants' failure to comply with the NYLL. Plaintiffs and the Rule 23 Class members have all been injured in that they have been uncompensated or under-compensated due to Defendants' common policies, practices, and patterns of conduct.

107. Plaintiffs will fairly and adequately represent and protect the interests of the Rule 23 Class members. Plaintiffs have retained counsel competent and experienced in complex class actions and employment litigation. There is no conflict between the Plaintiffs and the Rule 23 Class members.

108. A class action is superior to other available methods for the fair and efficient adjudication of this litigation. The members of the Rule 23 Class have been damaged and are entitled to recovery as a result of Defendants' violation of the NYLL as well as their common and uniform policies, practices, and procedures. Although the relative damages suffered by individual Rule 23 Class members are not *de minimis*, such damages are small compared to the expense and burden of individual prosecution of this litigation. The individual Plaintiffs lack the financial resources to conduct a thorough examination of Defendants' timekeeping and compensation practices and to prosecute vigorously a lawsuit against Defendants to recover such damages. In addition, class litigation is superior because it will obviate the need for unduly duplicative litigation that might result in inconsistent judgments about Defendants' practices.

109. This action is properly maintainable as a class action under Federal Rule of Civil Procedure 23(b)(3).

COLLECTIVE ACTION ALLEGATIONS

110. Plaintiffs bring the First and Second Causes of Action, FLSA claims, on behalf of themselves and all similarly situated persons who have worked as hourly service workers at Mama Mexico Restaurants who elect to opt-in to this action (the "FLSA Collective").

111. Defendants are liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs. Upon information and belief, there are many similarly situated current and former employees of Defendants who have been underpaid in violation of the FLSA and who would benefit from the issuance of a court-supervised notice of the present lawsuit and the opportunity to join the present lawsuit. Those similarly situated employees are known to Defendants, are readily identifiable, and can be located through Defendants' records. Notice should be sent to the FLSA Collective pursuant to 29 U.S.C. § 216(b).

CLASS-WIDE FACTUAL ALLEGATIONS

112. Plaintiffs and the members of the Rule 23 Class and the FLSA Collective (collectively "Class Members") have been victims of Defendants' common policy and plan that has violated their rights under the FLSA and the NYLL by denying them a proper minimum wage, overtime compensation, spread of hours, tips, and other wages. At all times relevant, Defendants' unlawful policy and pattern or practice has been willful.

113. As part of their regular business practice, Defendants have intentionally, willfully, and repeatedly harmed Plaintiffs and the Class Members by engaging in a pattern, practice, and/or policy of violating the FLSA and/or the NYLL as described in this Class Action Complaint. This policy and pattern or practice includes, but is not limited to the following:

114. Defendants denied Plaintiffs and the Class Members tips that they earned.

115. Defendants redistributed portions of the tips earned by Plaintiffs and the Class Members to employees not entitled to receive tips, including but not limited to managers, who had the power to hire and fire.

116. Defendants failed to pay Plaintiffs and the Class Members time and a half for all hours worked over forty in a work week in violation of the FLSA and the NYLL.

117. Defendants failed to keep accurate and adequate records of wages paid to Plaintiffs and the Class Members, deductions taken from their wages, allowances or other credits taken by Defendants, gratuities, and hours worked by Plaintiffs and the Class Members as required by the FLSA and the NYLL.

118. Defendants failed to comply with the posting and/or notice requirements of the FLSA and the NYLL.

119. Defendants failed to pay Plaintiffs and the Class Members at least at the applicable minimum hourly wage rate and overtime rate under the FLSA and the NYLL for hours worked.

120. Defendants failed to pay Plaintiffs and the Class Members spread-of-hours compensation.

121. Defendants made unlawful deductions from the wages of Plaintiffs and the Class Members, including but not limited to deductions for uniform-related expenses, breakages, customer walkouts and mistakes.

122. Defendants demanded, collected, received, retained, pooled, handled, counted, and held customer tips that Plaintiffs and the Class Members earned, and redistributed them to employees not entitled to receive them (the "Tip Pooling Policy").

123. Defendants unilaterally implemented the Tip Pooling Policy.

124. The Tip Pooling Policy was not voluntary on the part of Plaintiffs and the Class

Members.

125. The Tip Pooling Policy, *inter alia*, deprived Plaintiffs and the Class Members of the time value of their tips.

126. Upon information and belief, Defendants' unlawful conduct described in this Complaint has been pursuant to a corporate policy or practice of minimizing labor costs and denying employees compensation by knowingly violating the FLSA and NYLL.

127. Defendants' unlawful conduct has been widespread, repeated, and consistent. Upon information and belief, Defendants' policies and practices described in this Class Action Complaint were centrally promulgated and uniform.

128. Defendants' unlawful conduct, as set forth in this Class Action Complaint, has been intentional, willful, and in bad faith, and has caused significant damages to Plaintiffs and the Class Members.

129. Defendants' deceptive conduct prevented Plaintiffs and the Class Members from discovering or asserting their claims any earlier than they did.

PLAINTIFF'S FACTUAL ALLEGATIONS

130. Consistent with their policies and patterns or practices as described herein, Defendants harmed Plaintiffs individually as follows:

TERESA LARA BENAVIDEZ

131. Defendants did not pay Ms. Benavidez the proper minimum wage, overtime wage and spread of hours pay for all of the time that she was suffered or permitted to work each workweek.

132. Defendants did not inform Ms. Benavidez of the tipped minimum wage or tip credit provisions of the FLSA or the NYLL.

133. Defendants did not allow Ms. Benavidez to retain all the tips and mandatory gratuities she earned.

134. Defendants unlawfully demanded, held, retained, or received portions of the tips that Ms. Benavidez earned.

135. Defendants unlawfully redistributed part of Ms. Benavidez's tips to employees in positions that do not customarily and regularly receive tips and to agents of Defendants.

136. Defendants imposed upon Ms. Benavidez a tip redistribution or sharing scheme to which she never agreed.

137. Upon information and belief, Defendants did not keep accurate records of wages or tips earned, or of hours worked by Ms. Benavidez.

138. Defendants unlawfully deducted from Ms. Benavidez's wages for customer walkouts, breakages and mistakes.

139. Defendants did not compensate Ms. Benavidez for the cleaning, care, and maintenance of the uniforms it required her to wear.

140. Defendants did not pay Ms. Benavidez the required minimum amount of call-in pay for all days on which she reported for duty.

141. During the course of her employment, defendant Miguel Rojas would demean and insult the female hourly service workers. For example, in order to receive a meal at break time, the women would be forced to make coffee for Miguel Rojas. The male employees were not required to make coffee in order to receive meals. In addition, Miguel Rojas would yell and scream at the women, saying things such as "women are only good for one thing, being in bed."

142. Jose Lombardi, a manager at Mama Mexico would yell at the female hourly service workers, "I don't like to work with women, they cry too much, I don't care about their

problems." Lombardi would also refer to the Plaintiffs and other female employees as "chicken heads," a derogatory reference for a promiscuous female which implies certain sex acts.

143. On or about January 2009, Ms. Benavidez informed Jose Lombardi, a manager at Mama Mexico that she was pregnant. Soon thereafter, Ms. Benavidez was unable to lift heavy objects, due to the pregnancy. Ms. Benavidez asked for a reasonable accommodation- to work as a bartender instead of a busser, because it was a less physically demanding job. In April 2009, Ms. Benavidez trained to be a bartender and was fully able to perform the duties of that job. However, defendants refused to accommodate Ms. Benavidez and intentionally assigned her to positions where she would be forced to lift heavy objects and she was constructively discharged from her employment on May 5, 2009.

MARIA DE LOURDES GALVEZ

144. Defendants did not pay Ms. Galvez the proper minimum wage, overtime wage and spread of hours pay for all of the time that she was suffered or permitted to work each workweek.

145. Defendants did not inform Ms. Galvez of the tipped minimum wage or tip credit provisions of the FLSA or the NYLL.

146. Defendants did not allow Ms. Galvez to retain all the tips and mandatory gratuities she earned.

147. Defendants unlawfully demanded, held, retained, or received portions of the tips that Ms. Galvez earned.

148. Defendants unlawfully redistributed part of Ms. Galvez's tips to employees in positions that do not customarily and regularly receive tips and to agents of Defendants.

149. Defendants imposed upon Ms. Galvez a tip redistribution or sharing scheme to which she never agreed.

150. Upon information and belief, Defendants did not keep accurate records of wages or tips earned, or of hours worked by Ms. Galvez.

151. Defendants unlawfully deducted from Ms. Galvez's wages for customer walkouts, breakages and mistakes.

152. Defendants did not compensate Ms. Galvez for the cleaning, care, and maintenance of the uniforms it required her to wear.

153. Defendants did not pay Ms. Galvez the required minimum amount of call-in pay for all days on which she reported for duty.

154. During the course of her employment, defendant Miguel Rojas would demean and insult the female hourly service workers. For example, in order to receive a meal at break time, the women would be forced to make coffee for Miguel Rojas. The male employees were not required to make coffee in order to receive meals. In addition, Miguel Rojas would yell and scream at the women, saying things such as "women are only good for one thing, being in bed." Rojas also threatened to "burn" Galvez on more than one occasion.

155. Jose Lombardi, a manager at Mama Mexico would yell at the female hourly service workers, "I don't like to work with women, they cry too much, I don't care about their problems." Lombardi would also refer to the Plaintiffs and other female employees as "chicken heads," a derogatory reference for a promiscuous female which implies certain sex acts.

156. During the course of her employment, defendant Vincente Rojas would tell Ms. Galvez, "you are getting fat and chubby," and you are going to "break the floor." Furthermore, as Vincente Rojas was insulting Ms. Galvez, he would touch her face.

JAMIE HUERTA

157. Defendants did not pay Ms. Huerta the proper minimum wage, overtime wage and spread of hours pay for all of the time that she was suffered or permitted to work each workweek.

158. Defendants did not inform Ms. Huerta of the tipped minimum wage or tip credit provisions of the FLSA or the NYLL.

159. Defendants did not allow Ms. Huerta to retain all the tips and mandatory gratuities she earned.

160. Defendants unlawfully demanded, held, retained, or received portions of the tips that Ms. Huerta earned.

161. Defendants unlawfully redistributed part of Ms. Huerta's tips to employees in positions that do not customarily and regularly receive tips and to agents of Defendants.

162. Defendants imposed upon Ms. Huerta a tip redistribution or sharing scheme to which she never agreed.

163. Upon information and belief, Defendants did not keep accurate records of wages or tips earned, or of hours worked by Ms. Huerta.

164. Defendants unlawfully deducted from Ms. Huerta's wages for customer walkouts, breakages and mistakes.

165. Defendants did not compensate Ms. Huerta for the cleaning, care, and maintenance of the uniforms it required her to wear.

166. Defendants did not pay Ms. Huerta the required minimum amount of call-in pay for all days on which she reported for duty.

167. During the course of her employment, defendant Miguel Rojas would demean and insult the female hourly service workers. For example, in order to receive a meal at break time, the women would be forced to make coffee for Miguel Rojas. The male employees were not required to make coffee in order to receive meals. In addition, Miguel Rojas would yell and scream at the women, saying things such as "women are only good for one thing, being in bed."

168. Jose Lombardi, a manager at Mama Mexico would yell at the female hourly service workers, "I don't like to work with women, they cry too much, I don't care about their problems." Lombardi would also refer to the Plaintiffs and other female employees as "chicken heads," a derogatory reference for a promiscuous female which implies certain sex acts.

169. During the course of her employment, defendant Vincente Rojas would frequently show Ms. Huerta pictures of naked women he claimed to be having sexual relations with and he would say sexually demeaning comments to Ms. Huerta, such as, "you need a man like me", "I would put you on four legs and make you cum" and "I have a big dick", "Dominican women are better in bed than Mexicans", "One day I will get your ass." Furthermore, as Vincente Rojas was sexually harassing Ms. Huerta, he would touch her face and side.

FLORA ZURITA

170. Defendants did not pay Ms. Zurita the proper minimum wage, overtime wage and spread of hours pay for all of the time that she was suffered or permitted to work each workweek.

171. Defendants did not inform Ms. Zurita of the tipped minimum wage or tip credit provisions of the FLSA or the NYLL.

172. Defendants did not allow Ms. Zurita to retain all the tips and mandatory gratuities she earned.

173. Defendants unlawfully demanded, held, retained, or received portions of the tips that Ms. Zurita earned.

174. Defendants unlawfully redistributed part of Ms. Zurita's tips to employees in positions that do not customarily and regularly receive tips and to agents of Defendants.

175. Defendants imposed upon Ms. Zurita a tip redistribution or sharing scheme to which she never agreed.

176. Upon information and belief, Defendants did not keep accurate records of wages or tips earned, or of hours worked by Ms. Zurita.

177. Defendants unlawfully deducted from Ms. Zurita's wages for customer walkouts, breakages and mistakes.

178. Defendants did not compensate Ms. Zurita for the cleaning, care, and maintenance of the uniforms it required her to wear.

179. Defendants did not pay Ms. Zurita the required minimum amount of call-in pay for all days on which she reported for duty.

180. During the course of her employment, defendant Miguel Rojas would demean and insult the female hourly service workers. For example, in order to receive a meal at break time, the women would be forced to make coffee for Miguel Rojas. The male employees were not required to make coffee in order to receive meals. In addition, Miguel Rojas would yell and scream at the women, saying things such as "women are only good for one thing, being in bed."

181. Jose Lombardi, a manager at Mama Mexico would yell at the female hourly service workers, "I don't like to work with women, they cry too much, I don't care about their problems." Lombardi would also refer to the Plaintiffs and other female employees as "chicken heads," a derogatory reference for a promiscuous female which implies certain sex acts.

182. During the course of her employment, defendant Vincente Rojas would frequently say sexually and demeaning comments to Ms. Zurita, such as, "What's the problem with you, Dominican women are better in bed than Mexicans" and "You look like a penguin." Furthermore, as Vincente Rojas was demeaning and sexually harassing Ms. Zurita, he would touch her face.

FIRST CAUSE OF ACTION

Fair Labor Standards Act – Minimum Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)

183. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

184. Defendants failed to pay Plaintiffs and the Class Members the minimum wages to which they are entitled under the FLSA.

185. Defendants have engaged in a widespread pattern, policy, and practice of violating the FLSA, as detailed in this Class Action Complaint.

186. At all times relevant, Plaintiffs and the Class Members were engaged in commerce and/or the production or sale of goods for commerce within the meaning of 29 U.S.C. §§ 203(e), (m) and 206(a).

187. At all times relevant, Plaintiffs and the Class Members were or have been employees within the meaning of 29 U.S.C. §§ 203(e), (m) and 206(a).

188. At all times relevant, Defendants have been individual employers and/or joint employers engaged in commerce and/or the production of goods for commerce within the meaning of 29 U.S.C. §§ 203(e) and 206(a).

189. Defendants were required to pay directly to Plaintiffs and the Class Members the applicable federal minimum wage rate for all hours worked.

190. Defendants were not eligible to avail themselves of the federal tipped minimum wage rate under the FLSA, 29 U.S.C. § 203(m), and supporting federal regulations, including but not limited to 29 C.F.R. § 531.50 *et seq.*, because Defendants failed to inform Plaintiff and the Class Members of the provisions of subsection 203(m) of the FLSA, 29 U.S.C. § 203(m) and Defendants did not permit Plaintiffs and the Class Members to retain all tips they received, in violation of the FLSA, 29 U.S.C. § 203(m).

191. Defendants engaged in unlawful tip pooling practices.

192. Plaintiffs and the Class Members did not mutually agree to Defendant's tip pooling practices.

193. Upon information and belief, Defendants unlawfully redistributed portions of the tips received by Plaintiffs and the Class Members to employees in positions that do not customarily and regularly receive tips, in violation of the FLSA, 29 U.S.C. § 203(m) and supporting regulations.

194. Defendants failed to post and keep posted in a conspicuous place on their premises a notice explaining the FLSA, as prescribed by the Wage and Hour Division of the U.S. Department of Labor, in violation of the FLSA, 29 U.S.C. § 203(m) and supporting federal regulations, including but not limited to 29 C.F.R. § 516.4.

195. Defendants required Plaintiffs and the Class Members to spend their own money on work-related items, such as uniforms, which further reduced their wages below the required minimum wage.

196. Defendants failed to reimburse Plaintiffs and the Class Members for uniform-related expenses.

197. As a result of Defendants' violations of the FLSA, Plaintiffs and the Class Members have suffered damages by being denied minimum wages in accordance with the FLSA in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

198. Defendants' unlawful conduct, as described in this Class Action Complaint, has been willful and intentional. Defendants were aware or should have been aware that the practices described in this Class Action Complaint were unlawful. Defendants have not made a good faith effort to comply with the FLSA with respect to the compensation of Plaintiffs and the FLSA Collective.

199. Because Defendants' violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

SECOND CAUSE OF ACTION

Fair Labor Standards Act – Overtime Wages
(Brought on behalf of Plaintiffs and the FLSA Collective)

200. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

201. The overtime wage provisions set forth in the FLSA, 29 U.S.C. §§ 201 *et seq.*, and the supporting federal regulations, apply to Defendants and protect Plaintiffs and the Class Members.

202. Defendants have failed to pay Plaintiffs and the members of the FLSA Collective overtime wages for all hours that they worked in excess of 40 hours in a work week.

203. As a result of Defendants' unlawful acts, Plaintiffs and the FLSA Collective have been deprived of overtime compensation and other wages in amounts to be determined at trial,

and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to the FLSA.

THIRD CAUSE OF ACTION

New York Labor Law Article 19 – Minimum Wage
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

204. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

205. Defendants failed to pay Plaintiffs and the members of the Rule 23 Class the minimum wages to which they are entitled under the NYLL.

206. Defendants have engaged in a widespread pattern, policy, and practice of violating the NYLL, as detailed in this Class Action Complaint.

207. At all times relevant, Plaintiffs and the members of the Rule 23 Class have been employees and Defendants have been employers within the meaning of the NYLL §§ 190, 651(5), 652 and the supporting New York State Department of Labor Regulations.

208. The minimum wage provisions of Article 19 of the NYLL and the supporting New York State Department of Labor regulations apply to Defendants and protect the Plaintiffs and the members of the Rule 23 Class.

209. Defendants were required to pay Plaintiffs and the members of the Rule 23 Class a minimum wage at a rate of (a) $5.15 per hour for all hours worked from June 24, 2000 through December 31, 2004; (b) $6.00 per hour for all hours worked from January 1, 2005 through December 31, 2005; (c) $6.75 per hour for all hours worked from January 1, 2006 through December 31, 2006; and (d) $7.15 per hour for all hours worked from January 1, 2007 through the present, under the NYLL § 652 and the supporting New York State Department of Labor regulations, including but not limited to the regulations in 12 N.Y.C.R.R. § 137-1.2.

210. Defendants failed to pay Plaintiffs and the members of the Rule 23 Class the minimum hourly wages to which they are entitled under the NYLL and the supporting New York State Department of Labor regulations.

211. By Defendants' knowing or intentional failure to pay Plaintiffs and the members of the Rule 23 Class minimum hourly wages, they have willfully violated the NYLL Article 19 §§ 650 *et seq.* and the supporting New York State Department of Labor regulations, including but not limited to the regulations in 12 N.Y.C.R.R. § 137-1.2.

212. Defendants failed to furnish Plaintiffs and the members of the Rule 23 Class a statement with every payment of wages listing hours worked, rates paid, gross wages, and the tip allowance claimed as part of their minimum hourly wage rate, in violation of the NYLL and the supporting New York State Department of Labor regulations, including but not limited to the regulations in 12 N.Y.C.R.R. § 137-2.2.

213. By way of Defendants' knowing or intentional failure to pay Plaintiffs and the members of the Rule 23 Class minimum hourly wages, they have willfully violated the NYLL Article 19, §§ 650 *et seq.* and the supporting New York State Department of Labor regulations, including but not limited to the regulations in 12 N.Y.C.R.R. Part 137.

214. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid wages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest. Plaintiffs do not seek liquidated damages under the NYLL.

FOURTH CAUSE OF ACTION

New York Labor Law Article 19 – Unpaid Overtime
(Brought on behalf of Plaintiff and the members of the Rule 23 Class)

215. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

216. The overtime wage provisions of Article 19 of the NYLL and its supporting regulations apply to Defendants and protect Plaintiff and the Class Members.

217. Defendants have failed to pay Plaintiff and the Class Members the overtime wages to which they are entitled under the NYLL and the supporting New York State Department of Labor Regulations.

218. By Defendants' knowing or intentional failure to pay Plaintiff and the Class Members overtime wages for hours worked in excess of 40 hours per week, they have willfully violated NYLL Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor Regulations.

219. Due to Defendants' violations of the NYLL, Plaintiff and the Class Members are entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

220. Plaintiff does not seek liquidated damages under the NYLL.

FIFTH CAUSE OF ACTION

New York Labor Law – Spread-of-Hours and Split-Shift Pay
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

221. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

222. Defendants have willfully failed to pay Plaintiffs and the members of the Rule 23 Class additional compensation of one hour's pay at the basic minimum hourly wage rate for each

day during which they worked more than 10 hours and for each day that they worked a split-shift.

223. By Defendants' failure to pay the member of the Rule 23 Class spread-of-hours and split-shift pay, Defendants have willfully violated the NYLL Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations.

224. Due to Defendants' violations of the NYLL, Plaintiffs and the members of the Rule 23 Class are entitled to recover from Defendants their unpaid overtime wages, reasonable attorneys' fees, costs, and pre-judgment and post-judgment interest. Plaintiffs do not seek liquidated damages under the NYLL.

SIXTH CAUSE OF ACTION

New York Labor Law – Tip Misappropriation
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

225. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

226. At all times relevant, Plaintiffs and the Class Members have been employees within the meaning of NYLL §§ 190 *et seq.*, and supporting New York State Department of Labor Regulations.

227. At all times relevant, Defendants have been an employer within the meaning of NYLL §§ 190, *et seq.*, and supporting New York State Department of Labor Regulations.

228. The wage payment provisions of Article 6 of the NYLL and the supporting New York State Department of Labor Regulations apply to Defendants and protect the Plaintiffs and Class Members.

229. Defendants unlawfully demanded or accepted, directly or indirectly, the gratuities received by Plaintiffs and the Class Members in violation of NYLL § 196-d and supporting New York State Department of Labor Regulations.

230. Defendants unlawfully retained part of Plaintiffs' and the Class Members' gratuities in violation of NYLL § 196-d and supporting New York State Department of Labor Regulations.

231. Defendants pooled, redistributed and/or shared part of the gratuities received by Plaintiffs and Class Members in violation of NYLL § 196-d and supporting New York State Department of Labor Regulations.

232. By Defendants' knowing or intentional demand for, acceptance of, and/or retention of part of the gratuities received by Plaintiffs and the Class Members, Defendants have willfully violated NYLL Article 6, § 196-d and the supporting New York State Department of Labor Regulations, including, but not limited to, the regulations in 12 N.Y.C.R.R. § 137-2.5.

233. Plaintiffs do not seek liquidated damages under the NYLL.

SEVENTH CAUSE OF ACTION

New York Labor Law – Unlawful Deductions and Uniform Violations
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

234. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

235. Defendants failed to pay Plaintiffs and the members of the Rule 23 Class the full amount of their wages as a result of deductions for breakages, customer walkouts, mistakes and uniform-related expenses in violation of NYLL Article 6, § 193 and the supporting New York State Department of Labor Regulations, 12 N.Y.C.R.R. § 137-2.5.

236. Defendants failed to reimburse Plaintiffs and the Class Members for the cost of their uniforms they purchased.

237. Defendants failed to launder or maintain the required uniforms for Plaintiffs and the Class Members and failed to pay them the required weekly amount in addition to the required minimum wage.

238. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members are entitled to recover from Defendants their unpaid wages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

239. Plaintiffs do not seek liquidated damages under the NYLL.

EIGHTH CAUSE OF ACTION

New York Labor Law – Call-In Pay
(Brought on behalf of Plaintiffs and the members of the Rule 23 Class)

240. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

241. Defendants failed to pay Plaintiffs and the Class Members the required minimum amount of call-in pay for all days on which they reported for duty.

242. Due to Defendants' violations of the NYLL, Plaintiffs and the Class Members are entitled to recover from Defendants their unpaid wages, reasonable attorneys' fees and costs of the action, and pre-judgment and post-judgment interest.

243. Plaintiffs do not seek liquidated damages under the NYLL.

NINTH CAUSE OF ACTION

New York City Human Rights Law – Gender Discrimination
(Brought on behalf of all named Plaintiffs)

244. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

245. By and through their course of conduct, Defendants and their agents unlawfully discriminated against Plaintiffs due to their gender, in violation of the New York City Human

Rights Law, N.Y.C. Admin. Code §§8-107 *et seq.*

246. Defendants engaged in such discriminatory conduct intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiffs and their rights under the New York City Human Rights Law by treating them differently based on their gender.

247. As a direct and proximate result of Defendants' unlawful discriminatory actions, Plaintiffs have suffered damages and injuries, including but not limited to loss of pay and emotional distress.

TENTH CAUSE OF ACTION

New York City Human Rights Law – Hostile Work Environment
(Brought on behalf of all named Plaintiffs)

248. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

249. By and through their course of conduct, Defendants and their agents unlawfully discriminated against Plaintiffs by causing the workplace to be a hostile work environment, in violation of the New York City Human Rights Law, N.Y.C. Admin. Code §§8-107 *et seq.*

250. Defendants engaged in such discriminatory conduct intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiffs and their rights under the New York City Human Rights Law by subjecting them to a hostile work environment.

251. As a direct and proximate result of Defendants' unlawful discriminatory actions, Plaintiffs have suffered damages and injuries, including but not limited to loss of pay and emotional distress.

ELEVENTH CAUSE OF ACTION

New York City Human Rights Law – Sexual Harassment
(Brought on behalf of Plaintiffs Huerta and Zurita)

252. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

253. By and through their course of conduct, Defendants and their agents unlawfully sexually harassed Plaintiffs Huerta and Zurita, in violation of the New York City Human Rights Law, N.Y.C. Admin. Code §§8-107 *et seq.*

254. Defendants engaged in such discriminatory conduct intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiffs Huerta and Zurita and their rights under the New York City Human Rights Law by subjecting them to sexual harassment.

255. As a direct and proximate result of Defendants' unlawful discriminatory actions, Plaintiffs Huerta and Zurita have suffered damages and injuries, including but not limited to loss of pay and emotional distress.

TWELFTH CAUSE OF ACTION

New York City Human Rights Law – Pregnancy Discrimination
(Brought on behalf of Plaintiff Benavidez)

256. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

257. By and through their course of conduct, Defendants and their agents unlawfully discriminated against Plaintiff Benavidez due to her pregnancy, in violation of the New York City Human Rights Law, N.Y.C. Admin. Code §§8-107 *et seq.*

258. Defendants engaged in such discriminatory conduct intentionally and maliciously,

and showed a deliberate, willful, wanton and reckless disregard of Plaintiff Benavidez and her rights under the New York City Human Rights Law by failing to accommodate Benavidez and assign her a bartending position, which she was qualified for, thus constructively discharging Benavidez based on her pregnancy.

259. As a direct and proximate result of Defendants' unlawful discriminatory actions, Plaintiffs have suffered damages and injuries, including but not limited to loss of pay and emotional distress.

THIRTEENTH CAUSE OF ACTION

New York City Human Rights Law – Aiding and Abetting Discrimination (Brought on behalf of all named Plaintiffs)

260. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

261. Defendants Juan Rojas Campos, Vincente Rojas and Miguel Rojas aided and abetted Defendants Plaza Mexico, Inc., Piramides Mayas Inc. and Mama Mexico Midtown Realty LLC in their gender discrimination, hostile work environment, sexual harassment and pregnancy discrimination against Plaintiffs, in violation of New York City Human Rights Law, N.Y.C. Admin. Code §8-107(6).

262. Defendants Juan Rojas Campos, Vincente Rojas and Miguel Rojas engaged in such unlawful aiding and abetting intentionally and maliciously, and showed a deliberate, willful, wanton and reckless disregard of Plaintiffs and their rights under the New York City Human Rights Law.

263. As a direct and proximate result of Defendants Juan Rojas Campos, Vincente Rojas and Miguel Rojas's unlawful aiding and abetting, Plaintiffs have suffered damages and injuries,

including but not limited to loss of pay and emotional distress.

FOURTEENTH CAUSE OF ACTION

Common Law- Battery
(Brought on behalf of Plaintiffs Galvez, Huerta, Zurita)

264. Plaintiffs reallege and incorporate by reference all allegations in all preceding paragraphs.

265. Defendant Vincente Rojas grabbed and touched Plaintiffs Galvez, Huerta and Zurita. This bodily contact was made with intent and was offensive in nature.

266. As a direct and proximate result of Defendant Vincente Rojas's unlawful touching, Plaintiffs Galvez, Huerta and Zurita have suffered damages and injuries, including but not limited to loss of pay and emotional distress.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all other similarly situated persons, seek for the following relief:

A. That, at the earliest possible time, Plaintiffs be allowed to give notice of this collective action, or that the Court issue such notice, to all persons who are presently, or have at any time during the three years immediately preceding the filing of this suit, up through and including the date of this Court's issuance of court-supervised notice, been employed by Defendants as tipped hourly service employees at Mama Mexico Restaurants. Such notice shall inform them that this civil action has been filed, of the nature of the action, and of their right to join this lawsuit if they believe they were denied proper wages;

B. Unpaid minimum wages, overtime pay, and an additional and equal amount as liquidated damages pursuant to the FLSA and the supporting United States Department of Labor regulations;

C. Unpaid minimum wages, overtime pay, spread of hours pay, misappropriated tips, unlawful deductions interest, and other unpaid wages pursuant to NYLL Article 6, §§ 190 *et seq.* and Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations (Plaintiff does not seek liquidated damages under the NYLL on behalf of the Rule 23 Class);

D. Certification of this case as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

E. Designation of Plaintiff as representative of the Rule 23 Class, and counsel of record as Class Counsel;

F. Issuance of a declaratory judgment that the practices complained of in this First Amended Class Action Complaint are unlawful under NYLL Article 6, §§ 190 *et seq.* and NYLL Article 19, §§ 650 *et seq.*, and the supporting New York State Department of Labor regulations;

G. Pre-judgment interest and post-judgment interest;

H. An injunction requiring Defendants to pay all statutorily required wages pursuant to the NYLL;

I. Reasonable attorneys' fees and costs of the action;

J. An award of damages in an amount to be determined at trial, plus prejudgment interest to compensate Plaintiff for all monetary and/or economic damages, including but not limited to the loss of past and future income, wages, compensation, seniority, and other benefits of employment;

K. An award of damages in an amount to be determined at trial, plus prejudgment interest to compensate Plaintiff for all non-monetary damages, severe mental anguish and emotional distress, including but not limited to humiliation, embarrassment, stress, anxiety, loss of self esteem, loss of self confidence, loss of personal dignity and any other physical and mental injuries;

L. An award of punitive damages in an amount to be determined at trial;

M. Such other relief as this Court shall deem just and proper.

Dated: New York, New York
May 29, 2009

Respectfully submitted,

Brian Schaffer (BS7548)

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Attorneys for Plaintiff and the Putative Class

FAIR LABOR STANDARDS ACT CONSENT

I, consent to be a party plaintiff in a lawsuit against Plaza Mexico Inc., Mama Mexico and/or related entities and individuals in order to seek redress for violations of Fair Labor Standards Act, pursuant to 29 U.S.C. §216 (b). I hereby designate Fitapelli & Schaffer, LLP to represent me in such a lawsuit.

____

Signature

Teresa Lara Benavidez

Full Legal Name (Print)

601 w 140 street Apt 1

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City, State Zip Code

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[signature]

Signature

Maria de lourdes Galvez

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[signature]

Signature

Jamie P Huerta

Full Legal Name (Print)

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City, State Zip Code

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____

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